

and recommendation on August 22, 2006, denying both motions.

On January 12, 2007, defendant filed its second motion for summary judgment, attaching an affidavit from Wilbur T. Miller, a senior attorney in defendant's General and Administrative Law section, in lieu of a formal Vaughn index. Plaintiff filed its second motion for summary judgment on February 20, 2007. On May 3, 2007, this Court again referred the parties' motions for summary judgment to Magistrate Judge Kay for a report and recommendation. On September 11, 2007, Magistrate Judge Kay ordered defendant to produce for *in camera* review documents that it withheld under Freedom of Information Act Exemption 5. On October 5, 2007, Magistrate Judge Kay issued a report and recommendation recommending that this Court grant defendant's motion for summary judgment and deny plaintiff's motion for summary judgment. Plaintiff filed an objection to the report and recommendation on October 22, 2007, and defendant filed a response to plaintiff's objection on November 2, 2007.

Upon consideration and *de novo* review of the October 5, 2007 report and recommendation of Magistrate Judge Kay, and upon consideration of the objections and responses thereto and the entire record herein, the Court hereby adopts and approves the report and recommendation of Magistrate Judge Kay in its entirety. An Order consistent with this Opinion will issue this same day.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: November 8, 2007